

PATENT**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Application of: Douglas ALLARD

Serial No.: 09/384,832

Filed: August 27, 1999

For: CATCH BASIN FILTRATION SYSTEM
WITH DISPOSABLE SILT/
CONTAMINANT COLLECTOR

Group Art Unit: 3673

Examiner: A. Pechhold

Atty. Dkt. No.: 11533.0012.NPUS00
(formerly KRSR:005 and
KRSR.012)**DECLARATION**

I, Douglas Allard, an individual and citizen of the United States of America, having a business mailing address at Post Office Box 7352 Santa Rosa, California 95407, declare as follows:

1. I am the sole inventor of the invention claimed in the above captioned patent application. I am familiar with the contents of this declaration and, if called as a witness, could competently testify thereto.
2. I have worked in the construction industry, with an emphasis on drainage systems and products, since 1971. My experience includes working in product development of precast concrete drainage structures for Santa Rosa Cast, sales and product development of storm drain pipes and related products for Hydro Conduit, and drainage systems and products for Phoenix PreCast and Hansen Concrete. I am very knowledgeable about the operation and design of catch basin filtration devices.
3. All rights in the above captioned patent application have been assigned to KriStar Enterprises, Inc. ("KriStar"), a California corporation of which I am and have been an officer, as well as the Vice President of Sales and Product Development, at all times since 1998. I was also employed full-time by KriStar in product development and sales from 1996 until 1998. Prior to 1996, I was involved with KriStar for business ventures, product development and various other matters on a part-time basis.

4. KriStar was founded in 1993 by my wife, Debra Allard, and Andrea Barella, who is the wife of my business associate John Barella. KriStar started out by marketing and selling concrete storm drain products.

5. KriStar is currently in the business of manufacturing, marketing, distributing and maintaining a wide variety of storm water filtration and sedimentation control products, many of which are the subject of issued patents or patents pending. One such product is that which is described and claimed in the above captioned patent application.

6. Another product that KriStar has previously manufactured, marketed, distributed and maintained is that which is described and claimed in United States Patent No. 5,720,574, which issued to Barella on February 24, 1998, and is entitled CONTAMINANT ABSORBING DRAINAGE APPARATUS ("the '574 patent"). The '574 patent is assigned on its face to KriStar, which assignment currently remains in effect. A true and correct copy of the '574 patent is attached hereto as Exhibit A.

7. Another product that KriStar has previously manufactured, marketed, distributed and maintained is that which is described and claimed in United States Patent No. 5,632,889, which issued to Tharp on May 27, 1997 and is entitled FILTER CARTRIDGE FOR SEPARATING LIQUID HYDROCARBONS FROM WATER ("the '889 patent"). A true and correct copy of the '889 patent is attached hereto as Exhibit B.

8. I first met Gary Tharp in March of 1995. Mr. Tharp was the owner of Xsorb, a company that manufactured adsorbent material that I was interested in using in storm water filtration products. Mr. Tharp and I were both interested in entering a business relationship whereby KriStar purchased its adsorbent material from Xsorb.

9. At or around this time in March of 1995, Mr. Tharp and KriStar entered into a formal Non-Disclosure Agreement for purposes of showing products and negotiating business. Shortly thereafter, I personally demonstrated for Mr. Tharp a filtration application prototype for which I desired to use an adsorbent material.

10. Over the next few weeks, Mr. Tharp and I discussed various ways of solving some of the problems that were encountered by this prototype in operation. Several of these discussions involved the use of a cartridge to hold the adsorbent material.

11. During the course of the next several months, several individuals at KriStar, including myself, became aware of many material misrepresentations made by Mr. Tharp

regarding his business, his product and the industry in general. KriStar accordingly ceased all business dealings with Mr. Tharp in or about July of 1995.

12. Unbeknownst to myself or anyone at KriStar, Mr. Tharp filed a U.S. patent application on one variation of the product that KriStar had shown and discussed with him between March and June of 1995. This patent application later issued as the '889 patent.

13. In November of 1995, Mr. Barella and KriStar filed a U.S. patent application on a similar variation of the product that KriStar had shown and discussed with Mr. Tharp and had developed since that time. This patent application later issued as the '574 patent.

14. On August 10, 1998, KriStar filed suit against, *inter alia*, Gary Tharp in the United States District Court for the Northern District of California, case No. C98-3094 CRB. This suit alleged, *inter alia*, infringement by Mr. Tharp and others of the '574 patent.

15. During this suit, Mr. Tharp conceded in a signed declaration that he had learned of KriStar's storm water filtration system in February or March of 1995, and that this system, with the possible exception of the cartridge feature, was originally designed by KriStar and not himself. The true inventor of the cartridge feature was disputed and, to the best of my knowledge, this issue has never been formally resolved.

16. As part of a settlement agreement between KriStar and Mr. Tharp stemming from this suit, the '889 patent was assigned to KriStar on February 25, 1999. KriStar is the current and sole legal assignee of the '889 patent.

17. I am intimately familiar with the contents disclosed in the '889 patent, as I was substantially involved with the design and development of that which is described therein. I have personally experimented with and developed that which is disclosed in the '889 patent, as well as dozens of modifications and variations thereof.

18. In my duties for KriStar, I have overseen and been personally responsible for the manufacture, marketing, distribution and maintenance of thousands of individual units, each of which corresponds exactly to that which is described in the '889 patent.

19. I have personally witnessed fluid flow acting on such exact units in both simulated and actual operating environments and on hundreds of separate occasions. On hundreds of occasions, I have personally witnessed such exact units operating under extreme or high rates of fluid flow.

20. In the course of its business, KriStar has sold approximately 25,000 of such units that are exactly described in the '889 patent. Sales of this exact product began approximately seven years ago and ceased approximately four years ago, as improved devices were developed and implemented. Such sales have been made to numerous municipalities and other entities charged with storm water filtration responsibilities across the United States. Under existing and ongoing maintenance contracts, approximately 14,000 of these originally sold units are still maintained by Drainage Protection Systems, a subsidiary of KriStar.

21. In light of the reasons contained in paragraphs 1-20 above, among others, I am fully competent to testify as to what is taught by the '889 patent, as well as to anything that is inherent to that which is described therein.

22. Under any flow conditions, including extreme rates of inlet flow, water does not and cannot displace the cartridges that are contained in a device which corresponds exactly to that which is described in the '889 patent. These cartridges cannot float, were never intended to float, and were hence designed such that they do not float or otherwise become displaced.

23. The entire device is designed to filter incoming water, and such filtration can only be had when there is a tight seal between the trough and cartridge. Water passing between the trough and cartridge would defeat the purpose of the device to filter all incoming water, such that caulking or a sealing gasket has always been used to seal the cartridge to the trough. This is consistent with that which is described in the '889 patent, which states that "A sealing gasket 36 prevents water from bypassing the trough [28]." Because of this seal around the top of the cartridge, water is never given an opportunity to flow or otherwise get between the walls of the cartridge and the walls of the trough, such that the cartridge could thereby become displaced.

24. All incoming water flows through the cartridge or, during extreme or high flows, backs up and eventually flows over the center weir. Such a back up only occurs whenever incoming water enters the device at a rate faster than the rate that the cartridges containing adsorbent material can process the water. Passing water is restricted by the adsorbent material in the cartridge more than any other item in this device, such that filtered water passes or drains through enlarged openings at the bottom of the trough much faster than water passes through the adsorbent material and cartridge. As a result, it is impossible for fluid to build up at the bottom of the trough and thereby present any opportunity for the cartridge to float or otherwise become displaced. All of the foregoing is also consistent with that which is described in the '889 patent.

25. In practice, silt and sedimentation builds up on the adsorbent filled cartridges such that the water passage rate through the cartridges is diminished and the overflow over the weir is used more often. The cartridges are still not displaceable during these changing conditions, and the overflow across the weir would not be utilized nearly as much if the cartridges were to somehow become displaced such that water could flow between the cartridges and the trough. This problem with reduced device effectiveness due to silt buildup on the surface of the adsorbent filled cartridges was a motivating factor in the subsequent development of the fluid displaceable adsorbent containers now claimed in the above captioned patent application.

26. In my countless number of experiences with the thousands of devices exactly described in the '889 patent and manufactured by KriStar, I have never once witnessed water displace one of the cartridges in operation. I have also never heard of water displacing one of these cartridges in operation.

27. The cartridges contained in these devices are not tethered to the rest of the device or the storm catch basin in any way. Accordingly, if one or more cartridges were to become displaced by fluid, they would not only fail to filter incoming fluid as designed, but would also likely depart from the overall device, pass on through the drainage system and become lost.

28. Replacement of a used, damaged, defective or otherwise lost cartridge would have to be made through KriStar, as no other entity makes cartridges that would fit these devices. Despite the sale and installation of about 25,000 of these devices, all of which have been in service for four to seven years, however, neither myself nor anyone at KriStar has ever heard any report of any of these cartridges becoming lost or displaced in operation.

29. The statements made herein of my own knowledge are true, and all statements made on information and belief are believed to be true; and further that these statements are made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or document or any patent resulting therefrom.

Respectfully submitted,

Date: February 8, 2002

By: 
Douglas Allard